

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-00643-RJC-DCK

SENSORRX, INC.,)
Plaintiff,)
v.)
ELI LILLY AND COMPANY,)
Defendant.)
ORDER

On November 22, 2019, SensorRx, Inc. initiated this action in the Western District of North Carolina against Eli Lilly and Company (the “WDNC Action”). (Doc. No. 1.) On November 27, 2019, SensorRx filed a Motion for Preliminary Injunction. (Doc. No. 5.) A hearing on SensorRx’s Motion for Preliminary Injunction is currently scheduled for January 15, 2020.

On December 5, 2019, Eli Lilly filed a Motion to Dismiss for Improper Venue or, in the Alternative, Transfer to the Southern District of Indiana. (Doc. No. 7.) The basis for Eli Lilly’s motion is that on November 13, 2019—prior to SensorRx filing this WDNC Action—Eli Lilly filed a declaratory judgment action against SensorRx in the Southern District of Indiana, Case No. 1:19-cv-04550-RLY-DML (the “Indiana Action”). Eli Lilly contends that this Court should apply the “first-to-file” rule and transfer this later-filed WDNC action to the Southern District of Indiana in deference to the first-filed Indiana Action. (Doc. No. 8.) SensorRx opposes Eli Lilly’s motion to dismiss or transfer this WDNC Action, contending that special circumstances

warrant an exception to the first-to-file rule and that the Indiana Action is subject to dismissal under Seventh Circuit authority. (Doc. No. 24.)

On December 13, 2019, SensorRx filed in the Indiana Action a motion to dismiss or transfer venue to the Western District of North Carolina. (No. 1:19-cv-04550-RLY-DML, Doc. No. 26.) SensorRx’s motion to dismiss or transfer venue of the Indiana Action rests on the same grounds as its opposition to Eli Lilly’s motion to dismiss or transfer venue of this WDNC Action—that special circumstances warrant an exception to the first-to-file rule and the Indiana Action is subject to dismissal under Seventh Circuit authority. (No. 1:19-cv-04550-RLY-DML, Doc. No. 27.)

The Court concludes that because the Indiana Action was the first-filed action, this WDNC Action should be stayed pending the Indiana District Court’s determination as to whether it will retain jurisdiction over the Indiana Action. See Family Dollar Stores, Inc. v. Overseas Direct Imp. Co., No. 3:10-cv-278, 2011 U.S. Dist. LEXIS 4680, at *4 (W.D.N.C. Jan. 18, 2011) (noting that the district court in the later-filed action stayed the later-filed action pending a decision by the district court in the first-filed action as to whether it would retain jurisdiction over the first-filed action); Nutrition & Fitness, Inc. v. Blue Stuff, Inc., 264 F. Supp. 2d 357, 359 (W.D.N.C. 2003) (noting that the district court in the later-filed action stayed the later-filed action pending a decision by the district court in the first-filed action as to the venue issue and stating “where parallel federal litigation has been filed, the court in which the litigation was first filed must decide the question of where the case should be heard”).

IT IS THEREFORE ORDERED that:

1. The January 15, 2020 hearing on SensorRx's Motion for Preliminary Injunction is **CANCELLED**;
2. This action is hereby **STAYED** pending resolution by the Indiana District Court of SensorRx's motion to dismiss or transfer venue in the Indiana Action; and
3. The parties shall file a joint status report **within thirty (30) days of the date of this Order**.

Signed: January 2, 2020



Robert J. Conrad, Jr.
United States District Judge

